

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Delarian K. Wilson,

5 Petitioner

6 v.

7 Nevada Department of Corrections, et al.,

8 Respondents

Case No.: 2:16-cv-02989-JAD-GWF

**Order Denying Motions for
Reconsideration and Certificate of
Appealability**

[ECF Nos. 30, 31]

9 On June 29, 2018, I granted respondents' motion to dismiss and dismissed pro se
10 petitioner Delarian Wilson's 28 U.S.C. § 2254 habeas petition as untimely.¹ Judgment was
11 entered that same day.² Wilson has now filed what he styled as a "composite" motion for
12 certificate of appealability and a motion for reconsideration.³ I already denied Wilson a
13 certificate of appealability. In my June 29, 2018, order, I concluded: "And because reasonable
14 jurists would not find my decision to dismiss this seven-and-a-half-years-late petition as
15 untimely to be debatable or wrong, I decline to issue a certificate of appealability."⁴ Wilson's
16 request for one is therefore denied.

17 As for reconsidering my order, Federal Rule of Civil Procedure 60(b) allows the moving
18 party to relief from judgment for "any . . . reason justifying relief"⁵ Relief under this catch-
19 all provision requires "extraordinary circumstances."⁶ Rule 60(b) applies to habeas proceedings,
20 but only in conformity with the Antiterrorism and Effective Death Penalty Act (AEDPA),
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23 ¹ ECF No. 27.

24 ² ECF No. 28.

25 ³ ECF Nos. 30, 31.

26 ⁴ ECF No. 27 at 4.

27 ⁵ FED. R. CIV. P. 60(b)(6).

28 ⁶ *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

1 including the limits on successive federal petitions.⁷ When a motion for reconsideration
2 challenges the court’s analysis and decision on the merits of a claim, then the motion “is in
3 substance a successive habeas petition and should be treated accordingly.”⁸ “Before a second or
4 successive application . . . is filed in the district court, the applicant shall move in the appropriate
5 court of appeals for an order authorizing the district court to consider the application.”⁹ Where a
6 petition has been dismissed with prejudice as untimely or because of procedural default, the
7 dismissal constitutes a disposition on the merits and renders a subsequent petition second or
8 successive for purposes of 28 U.S.C. § 2244.¹⁰

9 Wilson urges me to reconsider his timeliness issue. That argument is therefore properly
10 construed as a second or successive petition.¹¹ He must obtain authorization from the Ninth
11 Circuit before he can proceed with a second or successive petition.¹² Because he has not done
12 so, Wilson’s motion for reconsideration is denied. Reasonable jurists would not find this
13 conclusion to be debatable or wrong, so I decline to issue a certificate of appealability for this
14 holding.

15 Conclusion

16 Accordingly, IT IS HEREBY ORDERED that Wilson’s motions for a certificate of
17 appealability and reconsideration [ECF Nos. 30, 31] are **DENIED**.

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22 ⁷ *Id.* at 529; 28 U.S.C. § 2244(b).

23 ⁸ *Gonzalez*, 545 U.S. at 531.

24 ⁹ 28 U.S.C. § 2244(3)(A).


25 ¹⁰ *McNabb v. Yates*, 576 F.3d 1028, 1029–30 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d
26 1049, 1053 (9th Cir. 2005).

27 ¹¹ *Henderson*, 396 F.3d at 1053.

28 ¹² 28 U.S.C. § 2244(b)(3).

1 IT IS FURTHER ORDERED that a certificate of appealability regarding any issue is
2 DENIED as set forth in this order.

3 Dated: July 30, 2018

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5 U.S. District Judge Jennifer A. Dorsey
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